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UNITED STATES DEPARTMENT OF AGRICULTURE  
Rural Electrification Administration

June 7, 1951

## MANAGEMENT MEMORANDUM 1

APPLICATION OF THE FAIR LABOR STANDARDS ACT

## Federal Wage and Hour Law

TO ALL REA BORROWERS:

PURPOSE

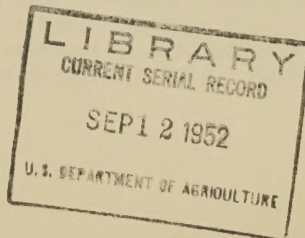
Congress has stated that the purpose of the Fair Labor Standards Act of 1938 is "to provide for the establishment of fair labor standards in employment in and affecting interstate commerce." The minimum wage and maximum hour provisions are intended to promote the health, efficiency and well being of workers.

COVERAGE

The provisions of the Law, as amended in 1949, apply to linemen, maintenance men, clerical and office workers and other employees. Any supervisor (1) who primarily performs managerial duties, (2) who exercises discretionary powers, (3) who directs the work of two or more other employees, (4) who has power to hire, discharge or make effective recommendations as to other employees, (5) whose work which is not directly and closely related to his managerial and supervisory duties does not exceed 20% of his hours worked, and (6) who is compensated on a salary basis at not less than \$55 per week, may be classified as an "executive" and exempt under the provisions of Section 541.1 of the Wage and Hour Division Regulations issued under Section 13(a)(1) of the Act.

MINIMUM WAGES --- OVERTIME PAY

The Act provides that no worker may be paid at a rate less than 75¢ an hour, and each worker must be paid at the rate of at least one and a half times his regular rate of pay for each hour worked over 40 hours in any one workweek. Generally, the overtime earnings of an employee in any completed week must be paid on his regular pay day for that week. The maximum hours per day are not fixed. There are no limitations upon the number of hours an employee may work in any one workweek. The workweek may begin at any time of any day of the weeks, but no change of the workweek may be made with the purpose of evading the overtime provision. There may be no "averaging" of hours over two or more weeks. Employees may be paid on a weekly, monthly, semi-monthly, or hourly basis. All overtime is figured on an hourly basis. An employer is not justified in reducing the wages or increasing the hours of an employee for the purpose of evading compliance with the Act.







### REGULAR HOURLY RATE OF PAY

The regular hourly rate of pay of an employee paid a weekly, semi-monthly or monthly salary is determined by the actual number of hours worked by him each week for which the salary is paid. The regular hourly rate is obtained by dividing the employee's total remuneration for employment in a particular work-week, except for statutory exclusions, by the total number of such hours.

Example: An employee whose base pay is \$200 a month was engaged to work by agreement or custom regular workweeks of 44 hours and, in fact, works such hours.

\$200 x 12 equals	\$2400	yearly salary
\$2400 ÷ 52 equals	\$46.155	weekly salary
\$46.155 ÷ 44 equals	\$1.049	hourly rate
40 hours x \$1.049 equals	\$41.96	
4 hours x \$1.574 equals	6.296	
	\$48.256	equals weekly earnings

Many cooperatives have found it more conducive to good labor relations to figure the hourly rate on a straight 40-hour week basis.

Example: An employee receiving the same base pay of \$200 a month but the salary is based on a regular workweek of 40 hours, although 44 hours are worked.

\$200 x 12 equals	\$2400	yearly salary
\$2400 ÷ 52 equals	\$46.155	weekly salary
\$46.155 ÷ 40 equals	\$1.154	hourly rate
40 hours x \$1.154 equals	\$46.155	
4 hours x \$1.731 equals	6.924	
	\$53.08	equals weekly earnings

As indicated above, if an employee is paid monthly or semi-monthly, the overtime compensation due for all workweeks ending in the pay period (either 4 or 5 in the month, or 2 or 3 in the half-month, as the case may be) must be paid on the regular pay day for that period, in addition to the regular monthly or semi-monthly salary covering his straight-time pay.

### BONUSES AND SPECIAL PAYMENTS

Among the payments that may be excluded from the regular rate of pay on which overtime is computed are: Christmas and similar gifts paid on special occasions; certain discretionary bonuses; sums paid pursuant to a bona fide profit-sharing, thrift or savings plan meeting the requirements of the regulations issued by the Administrator of the Wage and Hour Division; contributions irrevocably made by an employer pursuant to a bona fide plan providing old age, retirement, life, accident or health insurance or similar benefits for employees; certain reimbursements for expenses incurred by the employee on



his employer's behalf; certain payments made for absences due to vacation, holiday, illness, or other similar cause; certain premium payments for work on Saturdays, Sundays, and holidays and for certain types of daily or weekly overtime work.

#### RECORDS

Records of employees' hours, wages and method of payment must be kept for a period of three years. The records are subject to inspection by representatives of the Wage and Hour Division. Records must contain the following information:

- a. Full name of employee
- b. Home address
- c. Date of birth, if under 19
- d. Occupation
- e. Time of day and name of day on which employee's workweek begins
- f. Regular hourly rate of pay and basis on which paid
- g. Hours worked each work day and total hours worked each workweek
- h. Total daily or weekly straight time earnings or wages
- i. Total weekly extra compensation for overtime
- j. Total additions to or deductions from wages paid each pay period
- k. Total wages paid each pay period
- l. Date of payment and pay period covered by payment

For exempt managers and other exempt employees, items (f) through (j) need not be kept, but salary must be shown.

The poster issued by the Wage and Hour Division must be posted in conspicuous places so as to permit employees to observe readily a copy on the way to or from their place of employment. The posting of notice specifying the regular hours of work and forbidding overtime "without express official authority" does not release an employer from the obligation of keeping a record of hours actually worked or of paying compensation in accordance with the Act for such hours worked.

#### WAITING TIME AND EMPLOYEES SUBJECT TO CALL

Whenever an employee is required to be on duty, either at the employer's premises or at a prescribed place, any waiting time during such period constitutes hours worked, for which compensation must be paid. However, when an employee subject to call is at home or some other place but at liberty to leave, and is required merely to leave word where he may be reached, such time need not be considered hours worked.

#### TRAVEL TIME

Normal home to work travel is not working time. Ordinary walking, riding or traveling to and returning from the place where the employee performs his work

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is not considered working time unless it is made compensable by specific provision in a contract, or by a custom or practice, in effect at the particular place of business. On the other hand, the travel of a repair or maintenance man from one place where he performs work to another place where work is performed on the same day must be counted and paid for as working time; so also, time spent by an employee driving a car on his employer's business must be paid for as hours worked.

#### GUARANTEED SALARY

In the case of an employee whose duties necessitate irregular hours of work, section 7(e) of the Act permits the adoption of an employment agreement under which the employee is guaranteed a fixed weekly salary, based on his regular hourly rate, as straight-time and overtime pay for not more than 60 hours each week. Such an agreement must meet all the specific requirements of section 7(e).

#### ENFORCEMENT MEASURES

The Administrator of the Wage and Hour Division may supervise the payment of back wages due employees. On the written request of affected employees, the Secretary of Labor may, under certain conditions, bring suit against the employer to recover unpaid wages due employees.

Or, the employee may bring his own suit against his employer to recover the wages withheld, together with an equal amount as liquidated damages plus a reasonable attorney's fee and suit costs.

The Federal Government may prosecute an employer criminally for willful violations of the Act. Upon conviction the employer may be fined up to \$10,000 and, in a case of a second conviction, imprisoned for up to 6 months.

The Act prohibits discharging or discriminating against an employee because he has filed a complaint or started or participated in a proceeding under the Act.

#### COMPLIANCE WITH THE ACT

Recent suits by former employees of certain cooperatives to collect back pay for overtime with liquidated damages bring sharply to all cooperatives the necessity of compliance with the Federal Fair Labor Standards Act. In view of recent decisions of the courts, it appears probable that electric cooperatives generally will be considered subject to the provisions of the Act.

It is quite clear that cooperatives are not excluded merely because their lines may be wholly located within a single state. If any of the electric energy was generated in another state, it appears that the distribution agency is subject to the Act. Furthermore, if any users of the energy distributed by the cooperative are engaged in producing any products which are shipped in interstate commerce, it has been held that such cooperative is subject to the





Act. This means that every cooperative, as a matter of legal precaution as well as a matter of wholesome labor policy, should comply with the provisions of the Act.

The financial risks of non-compliance are considerable. Employees, past and present, may bring suits in courts for back pay for a period up to two years and for an equal amount of liquidated damages plus attorneys' fees. It is also possible for numerous employees to join their claims in a single unit.

This memorandum is a brief summary of the principal provisions of the Fair Labor Standards Act, as amended. We request that it receive the careful consideration of the Manager and the Board of Directors or Trustees. It should be kept in mind, however, that the memorandum is intended merely to indicate the general principles governing the application of the Act's provisions, and is not a comprehensive guide for operation in compliance with the law. The official publications of the Wage and Hour Division should be consulted for information on any questions regarding the application of the Act's provisions in specific cases and, where necessary, problems should be taken up with the nearest office of the Division.

This memorandum supersedes Operations Memorandum 8-1R issued June 10, 1948.

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UNITED STATES DEPARTMENT OF AGRICULTURE  
Rural Electrification Administration  
Washington 25, D. C.

December 3, 1951

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MANAGEMENT MEMORANDUM 2

SUBJECT: Rates and Contracts for Power Consumers

The purpose of this revised procedure is to expedite the extension of service to prospective power consumers. To this end, REA borrowers are assigned added responsibility for the determination of power contract provisions and charges for service as set forth below.

This memorandum, together with Administrative Bulletin No. 34-R2, Engineering Memorandum 113R4, and REA Form DS-13R, "Large Power Application", constitute a revised procedure for handling multi-phase extensions to all consumers and single phase extensions to commercial and industrial consumers.

A booklet entitled Large Power Rates and Contracts is being prepared for distribution to borrowers by the Management Division to give further assistance and guidance in applying rates, determining minimum charges and preparing service contracts.

PROCEDURES

- I. Multi-phase extensions to all consumers requiring less than 25 kva of transformer capacity (except for irrigation pumps) and single-phase service extensions to commercial and industrial consumers requiring less than 25 kva of transformer capacity:

For these consumers, Large Power Applications (Form DS-13R) are not required to be submitted to REA. However, they may be submitted if advice is desired in special cases.

- a. If the length of the extension required to serve a prospective consumer does not exceed 2,500 feet and no line conversion or other change in existing facilities is required, service should be furnished under the applicable rate schedule without increasing the minimum charge specified therein.



- b. If the length of the line extension required to serve the prospective consumer exceeds 2,500 feet, or if changes in existing facilities are necessary and are not a part of the future system, charges conforming to the following general principles are recommended:

- (1) The minimum charge in the applicable rate schedule should be increased by an amount sufficient to cover all expenses incident to the expenditure over and above that provided in paragraph a. above. Recommended methods of estimating expenses are contained in the booklet entitled, "Large Power Rates and Contracts".
- (2) In estimating expenses there should be included an amount sufficient to amortize the excess expenditure, less salvage value, over a period not in excess of ten years for commercial and industrial consumers or in excess of thirty-five years for other consumers. If it is probable that service will be terminated upon expiration of the contract term, the excess expenditure should be amortized over the contract term, but if there is reasonable assurance that service will be continued, a longer amortization period may be used but not in excess of the periods stated above.
- (3) Borrower should assume no more than a reasonable business risk in extending service and to this end the consumer may be required to make a deposit which will be refunded by means of credits on his monthly bills for service.
- (4) If additional consumers are later connected to the line extension on which the minimum charge is based, charges should be recomputed as if the entire extensions were new. In no case, however, should the minimum charge of any consumer already receiving service be increased.

II. Extensions (either multi or single-phase) to consumers requiring 25 to 140 KVA of transformer capacity or requiring an expenditure not in excess of \$10,000.

The procedure in Engineering Memorandum 113R4, Large Power Applications, should be followed. Form DS-13R, Data with Reference to

Large Power Application, should be submitted if 50 KVA or more of transformer capacity is required. Form DS-13R need not be submitted for smaller loads but much of the information called for in this form is needed by the borrower in order to estimate the maximum demand, the anticipated revenue and the cost of furnishing service. Therefore borrowers will find it helpful to obtain this information in order to determine transformer sizes, margin of revenue over expense and adequate contract provisions such as the minimum charge and contract term.

- a. If the borrower has adopted an REA recommended rate schedule which is applicable to the prospective consumer in accordance with the "Availability" clause in the rate schedule and if the estimated expenditure is not more than \$75.00 per KW of consumer's estimated maximum demand (which is the maximum expenditure REA large power rates are designed to support), the borrower should apply its adopted rate with a minimum charge of an amount which has been determined by the borrower to be adequate in view of the estimated expenditure, contract term and consumer's estimated maximum demand. In no case, however, should the minimum bill be less than that specified in the REA recommended rate schedule. The standard REA service contract, Form CO-20, Agreement for Purchase of Power, should be used. The borrower need not submit rate and contract data to REA for approval, but a copy of each contract should be furnished to REA headquarters for the information of the Management Division. If a copy of Form DS-13R is not submitted to REA because the transformer capacity is less than 50 KVA, a statement of the estimated expenditure required to extend service to the load should be attached to the contract for the information of the Management Division. If the assistance of REA is desired in preparing a service contract communicate with the Section Head or Field Representative, Management Division.
- b. If the estimated expenditure exceeds \$75.00 per KW of consumer's estimated maximum demand the cost of service may exceed revenue. In such cases it is recommended that there be added to each monthly bill a service charge in the amount of  $1\frac{1}{2}\%$  of the estimated expenditure in excess of \$75.00 per KW. The service charge should be a separate billing item added to the charges in the rate schedule. In other

respects the procedure should be the same as outlined above in paragraph "a".

The preparation of suitable contracts for consumers with large expenditures per KW is often difficult and in case of doubt a large power application should be submitted to REA headquarters with a request for rate and contract recommendations.

- c. Borrower should assume no more than a reasonable business risk in extending service and to this end the consumer may be required to make a deposit which will be refunded by means of credits on his monthly bills for service.
- d. If the borrower has not adopted an REA recommended rate schedule applicable to the prospective consumer he should submit to REA Form DS-13R following the procedure in Engineering Memorandum 113R4 and after examination the Management Division will recommend a rate and contract to the borrower.

### III. Extensions to large power consumers requiring more than 140 KVA of transformer capacity or an expenditure in excess of \$10,000.

For a consumer requiring more than 140 KVA of transformer capacity or more than \$10,000 expenditure, the borrower should submit Form DS-13R to REA following the procedure set forth in Engineering Memorandum 113R4 and after examination the Management Division will recommend a rate and contract to the borrower. Contracts with consumers requiring more than 140 KVA of transformer capacity require the written approval of the Administrator.

### IV. Extensions to Irrigation Pumps

REA borrowers located in areas where pump irrigation is feasible on a sound economic basis should encourage the development of irrigation by liberal terms for line extensions to pumps. Where feasible, the distribution system should be designed to furnish irrigation service on an area coverage basis.

- a. If a borrower has adopted an REA recommended irrigation rate schedule and line extension terms ( or area coverage) for irrigation pumps, it need not submit the rate and contract data for individual extensions to REA for review and approval. REA Form MA-162, Agreement for Electric Service to Irrigation Pump should be used.
- b. If a borrower has not adopted an REA recommended rate schedule and line extension terms for irrigation pumps,



all pertinent data should be submitted to REA headquarters and after examination, REA will recommend an irrigation rate schedule and line extension terms to the borrower.

V. Service at Wholesale for Resale

Contracts for service at wholesale for resale (with municipalities or others) require written approval of the Administrator even when transformer KVA is less than 140. Therefore, REA recommendations should be obtained before negotiating agreements with such consumers, using the same procedure as under Section III above.

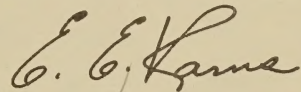
VI. Borrowers in TVA Areas

REA borrowers whose power requirements are supplied by the Tennessee Valley Authority use TVA resale rates and may use either the REA or the TVA form of service contract except that cooperatives should insert in the TVA contract form a provision requiring the consumer to become a member of the cooperative.

The procedure followed in handling service extensions and contracts should be the same in the TVA area as elsewhere.

VII. Borrowers in Section 9

REA borrowers in Section 9 should avail themselves of the services of the REA Western Area Office, 403 Title Building, Spokane 8, Washington, for handling large power rates and contracts including those requiring over 140 KVA. The Special Assistant to the Administrator In Charge of the Spokane Office is prepared to handle and expedite large power contracts.



E. E. Karns  
Chief, Management Division

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